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No. 04-213 19 DEC 6

In the
SUPREME COURT of the UNITED STATES

KAREN S. ZELMER,

Petitioner,

v.

JOANNE BARNHART,
COMMISSIONER OF THE SOCIAL SECURITY
ADMINISTRATION,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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56 pp

QUESTIONS PRESENTED:

The Ninth Circuit Court failed to properly review and address Petitioner's case. The questions presented are:

1. Did the U.S. Court of Appeals for the Ninth District ever address the main point posed by Petitioner? Is USPS financially on-budget for its operational costs, or are operational costs to include labor paid from the sale of postal services – postage and mailings?

2. Was the issue of failure to reasonably accommodate Petitioner's past administrative representative in the form of a change of venue for a certified qualified handicapped individual ever reasonably considered?

3. Did the ALJ commit an egregious error, when he admittedly asserted he allowed attorney representatives changes of venue regularly, but due to Petitioner's non-attorney status deny reasonable and timely change of venue request?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

When the Ninth Circuit U.S. Court of Appeals failed to address the issue of the United States Postal Service's ("USPS") budget status, it failed to reasonably and fully consider, *de novo* or otherwise, the issue brought by Petitioner. The issue remains: Is the Petitioner's disability pension from the USPS subject to the off-set provision, or due to the USPS's unique independent off-budget financial status, is it not properly subject to the offset provision.

STATEMENT OF JURISDICTION

The United States Court of Appeals Rule 10(a) states "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with ta decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." (emphasis added)

STATEMENT OF THE CASE

The only question the courts have addressed to-date, concerns the federal relationship the USPS retains, and all citations they offer only address that point. The off-set provision was enacted to prevent undue strain on the federal budget, to prevent "double-dipping," which would make the USPS's budgetary status cogent and germane to any other coherent adjudication of Petitioner's application for full widow's survivor's benefits. The attached letter from governmental relations representative Mr. Weagley, affirming Petitioner's position regarding the budget status of the USPS being independent, has been so far ignored. How can anyone in good conscience suggest this appeal has even been reasonably addressed or adjudicated?

Please be aware, this issue has not been raised in any decision offered by any of the courts. The courts site *Heckler v. Mathews, 465 US 728 (1984)* which is outdated and does not address the issue of the USPS being off budget. *Silver v. USPS, 951 F.2d 1033*, involves a company trying to escape sanctions brought against them. The USPS had certain governmental relationships "grand-fathered in" after the Reorganization Act which mandated the USPS to function independently and "break even" financially over the years. There remains governmental oversight, but the USPS is revenue self-generating. If revenue falls short, they raise their rates, as recently occurred.

The USPS competes directly against private enterprise, which the U.S. Constitution expressly prohibits. There was a case of *Fed Ex/UPS v. USPS*, wherein a District Court Judge ruled the USPS could not claim

governmental status/protection while functioning as private enterprise. It was settled confidentially and no court to-date has offered to use their access to obtain a copy.

Regarding the timely change of venue requests, the ALJ admitted allowing attorney representatives changes of venue, but ignored Petitioner's timely and repeated requests. When the representative of Petitioner's choice asserted his qualified handicapped status, he was denied and issued a not so veiled threat of compromising Petitioner's appeal if he kept insisting He was not provided an opportunity to submit proof of handicap status and Petitioner was forced to proceed to a hearing without assistance of her representative. The ALJ has the authority to decide the venue, but does he hold authority to unilaterally abrogate the Americans with Disabilities Act? Apparently so.

This is a larger issue than appears on the face of this appeal. That would be why the lower courts chose to circumvent the main issue presented by this appeal, budgetary status vice semantics of relationship to government. Petitioner wishes to receive her deceased U.S. Veteran husband's survivor's benefits without it being subject to the offset (which leaves his 66-yr old widow with a total of Nine dollars benefit).

REASONS FOR GRANTING WRIT and CONCLUSION

In summary, Petitioner begs this Court to see the common sense in her position and find in her favor for the following reasons. The record is replete with references to all herein claimed. Petitioner wishes to receive her

deceased husband's Social Security survivors benefit without deduction due to misapplied offset. Petitioner wishes to be made whole, that is to make this retroactive to her initial application. Petitioner wishes the SSA and ALJ to allow any representative and applicant be afforded the instructions and opportunity to provide any documentation ostensibly required for reasonable treatment and appropriate accommodation. The agencies had Petitioner's representative's social security number and could easily access his 100% disabled status from U.S. Veterans Affairs. If credit agencies can do this, it follows the SSA, ALJ, and courts, with full access to his file, could verify the same. If they had interest in being fair and reasonable, they could have instructed Petitioner or her representative to provide documentation. They probably knew his status, which is why they never requested proof. It is also sad that non-attorney representatives are accorded a lower standard of treatment than attorney representatives during attempts at administrative remedy. This Petitioner prays for your empowered assistance to right the wrongs, perusal of this entire record would clearly indicate.

Respectfully submitted this 3 day of March 2003.

Karen S. Zelmer

Karen S. Zelmer
Pro Se

CERTIFICATE OF SERVICE

I certify that I served the foregoing
Writ of Certiorari and enclosure by
by regular United States Mail on the
7 day of March 2003 on the following:

R. Linda Cosme
Assistant Regional Counsel
Social Security Administration
333 Market Street, Suite 1500
San Francisco, CA 94105

(Per Rule 29.4(a))

Solicitor General of the United States
Department of Justice, Rm 5614
950 Pennsylvania Avenue, N.W.
Washington DC 20530-0001

By Karen S. Zelmer

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ATTACHMENT

UNITED STATES
POSTAL SERVICE

September 22, 1998

Honorable Sam Farr
Member of Congress
701 Ocean Street, Room 318
Santa Cruz, CA 95060-4027

Dear Congressman Far:

This responds to your September 1 letter on behalf of Ms. Karen S. Zelmer of Moss Landing, regarding the Postal Service's status as an independent federal agency.

I understand your interest and appreciate the opportunity to provide some additional information about the Postal Service. The Postal Service is an independent government organization directed by an eleven-member Board of Governors. Nine of the members (the "Governors") are appointed by the President, with the advice and consent of the Senate, to nine-year terms or the unexpired portion of a term. The Governors

represent the public interest generally; no more than five may be adherents to the same political party. The Governors appoint the Postmaster General who, with the Governors, appoints the Deputy Postmaster General. These eleven persons comprise the full Board of Governors.

In August 1970, when Congress created the U. S. Postal Service as an independent establishment of the executive branch of the government, it retained jurisdiction for oversight of our operations. Each year, oversight hearings on the state of the Postal Service are conducted in both the House of Representatives and in the Senate. We are fully answerable to Congress in conformance with the Postal Reorganization Act.

I would also like to note that contrary to what many people believe, Postal Service operations are funded by

the users of the mail, not the taxpayers. Fiscal Year 1982 marked the last time the Postal Service received a public service subsidy. The appropriations we receive are for certain preferred classes of mail, which have been designated by law.

I hope this information clarifies the matter and will enable you to respond to her. Please let me know if I can be of assistance in other postal issues.

Sincerely,

/s/

William J. Weagley
Government Relations Representative